

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

V.

3.055 ACRES OF LAND, MORE OR
LESS, SITUATED IN STARR
COUNTY, STATE OF TEXAS; AND
THE UNKNOWN HEIRS OF
CARMEN MARTINEZ, ET AL.,

Defendants.

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CASE NO. 7:20-CV-405

NOTICE OF DISMISSAL PURSUANT TO FED. R. CIV. P. 71.1(i)(1)(A)

TO THE HONORABLE COURT:

In accordance with Fed. R. Civ. P. 71.1(i)(1)(A), the United States (“Plaintiff”), respectfully files the Notice of the Dismissal of this case and requests this Court issue an order of dismissal.

I. INTRODUCTION

1. Plaintiff is the United States of America (“Plaintiff”); named interested parties and purported property owners pursuant to the Schedule “G”¹ of the Declaration of Taking and Complaint in Condemnation² are: Unknown Heirs of Carmen Martinez, Unknown Heirs of Nicolasa Garcia de Moreno (wife to Julio Moreno), Unknown Heirs of Julio Moreno (husband to Nicolasa Garcia de Moreno), Margarita de la Cruz, Angie Moreno, Domingo Moreno, Juan Moreno, Esperanza Moreno, Maria Delia Moreno, Guadalupe Moreno, Heriberto Perez, Jr., Leroy

¹ Dkt. No. 2.

² Dkt. No. 1.

Perez,³ Rosalinda Moreno, Rosamaria Moreno, Roel Moreno, Romeo Moreno, Diana Moreno, Nicolasa Moreno, Ricardo Moreno, Raudel Moreno, Roque Moreno, Marie Diaz Moreno, Arturo Diaz, Yolanda Moreno, Berta Moreno, Sandra Moreno, Sunny Moreno, Unknown Heirs of Apolonio Rogelio Moreno, Rogelio Santiago Moreno,⁴ Sylvestre Luis Moreno, Mario Moreno, Pedro Moreno, Victor Moreno, Maria Moreno de Palomino, Patricia Moreno, Esteban Moreno, Unknown Heirs of Raul Prudencio Moreno, Nicolasa Moreno, Raul Moreno, Jr., Margarita Montoya Moreno (wife to Silviano Reynaldo Moreno, Sr.), Silviano Reynaldo Moreno, Jr., Susana Garza, Norma Garcia, Nelia Torres, Jaime Eli Moreno, Margarita Eliz Rangel, Julio Esteban Moreno, Jr., Omar Javier Moreno, Ivan Eden Moreno, Unknown Heirs of Idolina Moreno (wife to Julio Ruben Moreno), Amador Moreno, Javier Moreno, Julio Ruben Moreno, Jr., Isabel Moreno, Unknown Heirs of Amparo Moreno, Unknown Heirs of Javier Garcia, and Unknown Heirs of Guadalupe Moreno de Garcia.⁵

2. On December 10, 2020, Plaintiff filed the Declaration of Taking and Complaint in Condemnation⁶ for a fee simple interest in Tract No. RGV-RGC-2038 (hereinafter referred to as the "Subject Property"). The interest and Subject Property are more particularly described in Schedules "C", "D", and "E" of the Declaration of Taking and Complaint in Condemnation.⁷

³ On May 19, 2021, the United States filed an Unopposed Motion to Substitute Heriberto Perez, Jr. and Leroy Perez, in Place of Unknown Heirs of Ninfa Moreno (a.k.a. Maria Ninfa Moreno), which the Court granted on May 24, 2021. (Dkt. Nos. 82 and 83).

⁴ On July 14, 2021, Plaintiff filed a Motion to Correct Scrivener's Error, which the Court granted on July 16, 2021. (Dkt. Nos. 89 and 90).

⁵ Schedule "G" of the Declaration of Taking and Complaint in Condemnation originally named Unknown Heirs of Noelia Guadalupe Diaz, Unknown Heirs of Roberto Luis Diaz, and Unknown Heirs of Agapito Rene Moreno, Sr. as interested parties, but these parties have since been dismissed from this action. (Dkt. Nos. 74 and 91) Ameida Salinas, Starr County Tax Assessor, was also included as an interested party. Ameida Salinas, Starr County Tax Assessor executed a Notice of Disclaimer and was subsequently dismissed. (Dkt. Nos. 5 and 7)

⁶ Dkt. Nos. 1 and 2.

⁷ *Id.*

3. Plaintiff initiated the present condemnation proceeding to acquire this parcel of land—RGV-RGC-2038—to facilitate border barrier construction.

4. Because of the rescoping and re-planning process called for by the *DHS Border Wall Plan Pursuant to Presidential Proclamation 10142*, the United States does not presently require this parcel of land. Whether the United States may need this tract in the future—including for non-border barrier security projects, such as surveillance technology, lighting, and roads—will be decided following the rescoping and re-planning process described in the Plan.

5. At this point, however, as the United States does not hold title to this parcel of land and has not deposited money with the Court to secure title, it supports dismissal without prejudice of the condemnation proceeding.

II. ARGUMENT

6. Plaintiff seeks dismissal of the entire action pursuant to Fed. R. Civ. P. 71.1(i)(1)(A).

7. In this case, no compensation hearing on this Property has begun. Plaintiff has not deposited any money into the registry of the court and therefore, has not acquired title. Moreover, Plaintiff has not yet acquired possession. Lastly, Plaintiff has not exercised control over any portion of said Property.

8. Pursuant to Fed. R. Civ. P. 71.1(i)(1)(A), the Property identified as RGV-RGC-2038 is described as follows:

BEING a 3.055 acre tract (133,073 square feet) parcel of land, more or less, being out of a called 17.74 acre tract, recorded in Document No. 1944-34908, Official Records of Starr County (O.R.S.C.), Texas, conveyed to Julio Moreno, now owned by the Unknown Heirs of Carmen Martinez, et al, said tract being all of Share No. 308-A, Abstract 146, Porcion 67, Ancient Jurisdiction of Mier, Mexico.

III. DISMISSAL

9. Plaintiff, United States of America, gives notice of the dismissal of this action, pursuant to Fed. R. Civ. P. 71.1(i)(1)(A).

Respectfully submitted,

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Southern District of Texas

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CERTIFICATE OF SERVICE

I, Hilda M. Garcia Concepcion, Assistant United States Attorney for the Southern District of Texas, hereby certify that on September 14-15, 2021, a copy of the foregoing was served on all parties in accordance with the Federal Rules of Civil Procedure.

BY: s/ *Hilda M. Garcia Concepcion*
HILDA M. GARCIA CONCEPCION
Assistant United States Attorney